

UNITED STATES DISTRICT COURT

for the
Western District of North Carolina

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Residence of Billy Joe Hurley
535 Lands Creek Rd, Bryson City, North Carolina

Case No.

1:19-mj-87

FILED
ASHEVILLE, N.C.

SEP 27 2019

U.S. DISTRICT COURT
W. DIST. OF N.C.

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

SEE ATTACHMENT A

located in the Western District of North Carolina, there is now concealed (identify the person or describe the property to be seized):

SEE ATTACHMENT B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
36 CFR 2.1(a)(1)(ii)

Offense Description
Possession, Destroying, Injuring, Defacing, Removing, Digging or Disturbing from its
Natural State Plants/Parts or Products Thereof: Harvesting Ginseng

The application is based on these facts:
See Attached Affidavit

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


 Applicant's signature


Michael Scheid, United States Park Ranger (NPS)
 Printed name and title

Sworn to before me and signed in my presence.

Date:

9/27/2019

City and state: Asheville, North Carolina


 Judge's signature

W. Carleton Metcalf, United States Magistrate Judge
 Printed name and title

This Affiant, Michael Scheid, Law Enforcement officer with the National Park Service, being duly sworn, states:

I am currently investigating violations of federal laws, including 36 CFR 2.1(a)(1)(ii), Possession, Destroying, Injuring, Defacing, Removing, Digging or Disturbing from its Natural State Plants/Parts or Products Thereof, that is, harvesting ginseng by Billy Joe HURLEY. I am requesting a search warrant for HURLEY's residence located at **535 Lands Creek Rd, Bryson City, NC 28713**.

1. The statements contained in this affidavit are based on my observations and investigation as well as the observation and investigation of other law enforcement officers. It is also based on my background in law enforcement and experience working various criminal investigations.

2. I am a Law Enforcement Officer for the United States Department of Interior, National Park Service, and have been since 2001. I am assigned to the Great Smoky Mountains National Park in North Carolina. Among other types of crimes, this Affiant has been responsible for numerous investigations of ginseng poaching occurring on National Park Service property. It has been this Affiant's experience that perpetrators of such crimes often keep the items stolen from the crimes within their residences and vehicles with the intention of selling them at a different date and location.

3. Around 9:00 PM on the evening of September 25, 2019, while working in the Great Smoky Mountains National Park, in Swain County, in the Western District of North Carolina, Law Enforcement Ranger James Latendresse was in the area of Noland Creek Trail at Backcountry Campsite 64. Ranger Latendresse was walking back to his vehicle from farther up the Noland

Creek Trail when he saw two adult males with flashlights looking around the vehicle he had parked at Campsite 64. Backcountry Campsite 64 is 4.1 miles from the Noland Creek Trailhead. When Ranger Latendresse approached the males he immediately recognized one of the males as Billy Joe HURLEY. Ranger Latendresse has encountered HURLEY on numerous previous occasions. The other male was identified as Joshua D. Waldroup. Both HURLEY and Waldroup were extremely dirty, with dirty hands, dirty boots and dirty knees. Both Waldroup and HURLEY denied digging ginseng within the park. HURLEY and Waldroup stated that they were just hiking and had entered the park at 2:00 AM that morning. HURLEY and Waldroup stated that they had just come from the Springhouse Branch Trail onto the Noland Creek Trail. HURLEY and Waldroup did not have any ginseng in their possession. In this Affiant's knowledge and experience, HURLEY has in the past hidden the ginseng that he has dug and then returned later to retrieve it. Law enforcement Rangers arrested HURLEY and Waldroup following this encounter and they have been in continuous federal custody.

4. On Thursday September 26, 2019, at about 12:30 PM, law enforcement Ranger Cory Sutton and the Affiant were searching for the ginseng we suspected HURLEY to have hidden prior to their (HURLEY and Waldroup) encounter with Ranger Latendresse at Campsite 64. Ranger Sutton found a white plastic shopping bag about 750 feet away from the location HURLEY and Waldroup were contacted on the Springhouse Branch Trail. The bag was hidden within arm's reach of the trail under a tree root ball covered in bark. The white plastic bag contained two Ziploc bags with 276 freshly dug ginseng roots.

5. I am also aware that on Sunday, September 8, 2019, at about 5:00 PM, HURLEY entered the park on Noland Creek Trail carrying nothing. HURLEY was observed a few minutes later carrying an orange bag back out Noland Creek trail towards the Noland Creek Trailhead with a

male known as Jeffrey Hurley, who is Billy HURLEY's brother and is known by me to have illegally dug ginseng with Billy HURLEY on previous occasions.

6. On Tuesday, September 17, 2019, I observed HURLEY entering the park on the Noland Creek trail at about 7:30 PM with Joshua Waldroup.

7. On Tuesday, September 24, 2019, at about 5:00 PM, law enforcement Ranger Karl Danforth observed HURLEY entering the park with Joshua Waldroup.

8. HURLEY and Waldroup have not always been observed exiting the park and it is suspected that this is due to the close proximity of their residences to the park boundary.

9. HURLEY's residence is less than 1 mile from the park boundary. The boundary is easily accessible by Styles Road that follows the boundary for several miles and also starts on Fontana Road. 0.6 miles from HURLEY's residence. The north end of Styles Road is only 1.6 miles from Noland Creek Trail if traveling cross country. In the Affiant's training, knowledge and experience, ginseng poachers will hike several miles just to get into ginseng habitat and will also hike several miles to avoid the possibility of contact with law enforcement.

10. In the Affiant's training, knowledge and experience, after digging ginseng, ginseng poachers will often take the ginseng back to their residence in order to dry it for later sale as dried ginseng brings more money at sale. It is also within the Affiant's knowledge and experience that if not keeping ginseng long enough to dry it, ginseng poachers will often still keep several days-worth of freshly dug ginseng at their residence in order to conduct a single trip to a dealer which makes the sale more profitable and minimizes exposure to law enforcement. In light of all the aforementioned trips into and out of the park, in this Affiant's knowledge and experience, there is probable cause to believe that there could be large quantities of ginseng stored at HURLEY's residence. During

previous investigations, I have been to HURLEY's residence and I have discovered records relating to ginseng digging and ginseng drying.

11. Based on the above, this Affiant's training and experience, and the training and experience of other officers involved in this investigation, there is probable cause to believe that in the residence located at 535 Lands Creek Road Bryson City, North Carolina, there is evidence of the commission of the offenses listed above. Particularly, there is probable cause to believe that the items described in this affidavit, that is: ginseng roots, equipment used in the harvesting of ginseng, and receipts or documents related to the commercial sale of illegally harvested ginseng are likely to be found on the premises.

THIS AFFIDAVIT HAS BEEN REVIEWED BY ASSISTANT UNITED STATES ATTORNEY DAVID A. THORNELOE



Michael P. Scheid

9/27/2019

Date

Law Enforcement Officer, National Park Service

Sworn to before me, and subscribed in my presence.

9/27/2019 at Asheville, North Carolina



W. Carleton Metcalf
United States Magistrate Judge
Western District of North Carolina

Attachment A - Location to be searched

The residence of Billy HURLEY, located at:

**535 Lands Creek Rd
Bryson City, NC 28713**

To get to this residence located off Lakeview Drive in Bryson City, North Carolina, take Everett Street from Downton Bryson City until it turns into Fontana Rd. Continue on Fontana Road for 2.2 miles and take a right onto Lands Creek Rd. 535 Lands Creek is 0.5 miles on the left hand side of the road. As you pull into the driveway of 535 Lands Creek, there is a plywood structure covered with a tarp. This is Billy HURLEY's residence and it is the location to be searched.

Attachment B: Items to be seized

1. Ginseng Roots.
2. Equipment used in the harvesting of ginseng.
3. Receipts or documents related to the commercial sale of illegally harvested Ginseng.
4. Indicia of residency or occupancy of the residence such as bills, envelopes, etc.